

**STATE OF VERMONT  
SECRETARY OF STATE  
OFFICE OF PROFESSIONAL REGULATION  
BOARD OF NURSING**

**IN RE:**

**Theresa M. Faleski  
License No. 026.0034118**

**Docket No. 2021-48**

**STIPULATION AND CONSENT ORDER**

**STIPULATION**

NOW COME the State of Vermont, by and through State Prosecuting Attorney Jennifer B. Colin, and Respondent Theresa M. Faleski, who hereby Stipulate and Agree as follows:

**Board Authority**

1. The Vermont State Board of Nursing (the "Board") has authority to issue warnings or reprimands; suspend, revoke, limit, or condition current licenses; or prevent the renewal of lapsed licenses if, after disciplinary hearing, the Board finds that the Respondent has engaged in unprofessional conduct. 3 V.S.A. §129; 3 V.S.A. §129a; 3 V.S.A. §814(d); 26 V.S.A. Chapter 28; the Administrative Rules of the Board of Nursing (the "ARBN"); and the Rules of the Office of Professional Regulation ("OPR").

**Alleged Facts**

2. Theresa M. Faleski ("Respondent") of North Springfield, Vermont is licensed by the State of Vermont as a Registered Nurse ("RN") under license number 026.0034118. This license was originally issued on August 17, 2006 and expires on March 31, 2023.
3. During the relevant time, Respondent was employed as a staff RN at Springfield Hospital ("the Facility") in Springfield, Vermont.
4. Respondent worked at the Facility from February 2014 to October 2020.
5. With the advent of the infectious illness COVID-19 in 2020, the Facility put a mandatory mask policy in effect for the protection of patients and staff.
6. On multiple occasions in 2020, Facility sent staff written reminders of the Facility policy requiring all staff to wear surgical or cloth masks at all times, except when eating or drinking. When eating and drinking staff was directed to follow social distancing procedures.

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7. On September 9, 2020 between 6:00 and 7:00 a.m., Respondent had worked an overnight shift on the Inpatient Care Unit (IPCU) and was noted as not wearing a mask to cover her nose and mouth in a common area by another Facility staff member.
8. On the morning of September 9, 2020, nursing students arrived on the unit where Respondent worked. The students and nurses gathered at the nurses' station until it was time for report. Everyone was wearing a mask except Respondent, who was walking up and down the hallways, laughing and swearing loudly outside of patient rooms, and not wearing a mask.
9. A few minutes later, as nurses gathered in the break room for report, Respondent was still not wearing a mask.
10. The day charge nurse gave Respondent a mask to put on and exited the room, at which time Respondent crumpled the mask in her hand and stated words to the effect of "I don't care, I'm not wearing it."
11. On October 6, 2020, a nursing student arrived on the unit and encountered Respondent not wearing a mask.
12. On October 6, 2020 while Respondent was on shift, Respondent was heard stating words to the effect of "I'll take the risk and not wear the mask."
13. Also on October 6, 2020, while giving report to another nurse and a nursing student in the medication room, Respondent removed her mask, stating words to the effect of "I am not wearing this mask any longer. You are far enough away. Please do not get me written up or tell your instructor."
14. Respondent continued giving report but then followed up on the mask comments to the nurse and nursing student by stating words to the effect of "If you tell on me, I will fucking kill you."
15. The same nursing student witnessed Respondent, on a separate morning, not wearing a mask while on a computer in a common hallway of the Facility's IPCU.
16. The Facility terminated Respondent's employment on October 7, 2020.
17. In response to the Specification of Charges, Respondent stated that she has PTSD resulting from a history of trauma that made it difficult for her to wear a mask for long periods.

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**Violation One: 3 V.S.A. §129a(b)(1) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care.**

18. Paragraphs 3 through 17 above are incorporated herein.
19. As an RN, Respondent is required to provide safe and acceptable patient care.
20. Paragraphs 3 through 17 demonstrate that Respondent performed unsafe and unacceptable patient care by refusing to wear a mask while on shift on the IPCU of the Facility.
21. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent performed unsafe and unacceptable patient care in violation of 3 V.S.A. §129a(b)(1).

**Violation Two: 3 V.S.A. §129a(b)(2) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (2) failure to conform to the essential standards of acceptable and prevailing practice.**

22. Paragraphs 3 through 17 above are incorporated herein.
23. The essential standards of acceptable and prevailing practice require that an RN comply with infectious disease controls and Personal Protective Equipment (PPE) measures while working in a health care facility to prevent the spread of COVID-19.
24. Paragraphs 3 through 17 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice when, on multiple occasions, she refused to follow infectious disease controls and wear a mask to cover her nose and mouth while in the presence of Facility staff, nursing students, and in common areas outside of patient rooms.
25. The essential standards of acceptable and prevailing practice require an RN to communicate with coworkers, colleagues, students, and patients in a respectful and professional manner.
26. Paragraphs 3 through 17 above demonstrate that Respondent failed to conform to the essential standards of acceptable and prevailing practice when she threatened a student and colleague, when she verbally expressed refusal to comply with infectious disease controls while in a common area with colleagues, and when she walked the hallways outside of patient rooms loudly swearing.

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27. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because the Respondent failed to conform to the essential standards of acceptable and prevailing practice in violation of 3 V.S.A. §129a(b)(2).

**Violation Three: 26 V.S.A. §1582(a)(3) Engaging in conduct of a character likely to deceive, defraud, or harm the public.**

28. Paragraphs 3 through 17 above are incorporated herein.
29. As an RN, Respondent is required to refrain from engaging in conduct of a character likely to deceive, defraud, or harm the public.
30. Paragraphs 3 through 17 demonstrate that Respondent engaged in conduct of a character likely to deceive, defraud, or harm the public by refusing to comply with infectious disease controls and PPE measures to reduce the spread of COVID-19 to patients and staff of the Facility.
31. Paragraphs 3 through 17 demonstrate that Respondent engaged in conduct of a character likely to deceive, defraud or harm the public when she threatened a colleague and student so they would not report her for her refusal to wear a mask while on shift at the Facility.
32. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct of a character likely to deceive, defraud, or harm the public in violation of 26 V.S.A. §1582(a)(3).

**Violation Four: 3 V.S.A. §129a(a)(15) Failing to exercise independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.**

33. Paragraphs 3 through 17 above are incorporated herein.
34. As an RN, Respondent is required to exercise her own independent professional judgment in the performance of licensed activities when that judgment is necessary to avoid action repugnant to the obligations of the profession.
35. Paragraphs 3 through 17 demonstrate that Respondent failed to exercise independent professional judgment by refusing to comply with infectious disease controls and PPE measures to prevent the spread of COVID-19 while working at the Facility.
36. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent committed unprofessional conduct in violation of 3 V.S.A. §129a(a)(15).

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### Understandings

37. This Stipulation is neither an admission of liability by Respondent nor a concession by the State of Vermont that its charges are not well-founded. To avoid delay, uncertainty, inconvenience, and the expense of protracted litigation, the Parties enter this full and final Stipulation pursuant to these Understandings and the Order below. Respondent does not dispute that the State may be able to prove these charges by a preponderance of the evidence if this matter proceeds to a merits hearing.
38. Respondent understands that the Nursing Board must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
39. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced her rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
40. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.
41. Respondent is not under the influence of any drugs or alcohol at the time she signs this Stipulation and Consent Order.
42. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
43. Respondent voluntarily waives her right to a contested hearing before the Board of Nursing and waives any right to appeal from this Stipulation and Consent Order.
44. Respondent agrees that the Order set forth below may be entered by the Board.

### ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. The Board of Nursing hereby **REPRIMANDS** Respondent's license.
- B. The Board of Nursing hereby **CONDITIONS** Respondent's license commencing with the date of entry of this Stipulation and Consent Order. The conditions will be as follows:
  1. Re-issuance of License. Upon the commencement of these conditions, Respondent shall be issued a license labeled "conditioned."
  2. Required Coursework. Respondent shall, at her own expense and within ninety (90) days of the date of entry of this Stipulation and Consent Order, successfully

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complete (i.e., receive a passing score, if applicable) the NCSBN online course entitled "COVID-19 Epidemiology, Modes of Transmission and Protecting Yourself with PPE" (<https://catalog.icsncsbn.org/courses/working-modes-of-transmission-and-personal-protection-equipment>) and the NCSBN online course entitled "Righting a Wrong: Ethics and Professionalism in Nursing" (<https://www.ncsbn.org/5125.htm>) and submit test results, workbooks completed to the satisfaction of the Case Manager, and certificates of completion to the Office of Professional Regulation.

Failure to successfully complete the course within the prescribed timeframe shall constitute a violation of this Order. The coursework may not be counted toward any continuing education requirement of licensure.

3. Notification to Employers. Respondent shall provide a copy of this Stipulation and Consent Order to all employers in any setting in which Respondent practices as a nurse and inform them of Respondent's conditional license status. Within ten (10) days of the date of entry of this Consent Order and within ten (10) days of any new nursing employment during the conditional period, Respondent shall cause Respondent's immediate supervisor to submit to the Case Manager a signed acknowledgement of receipt of this Stipulation and Consent Order.
  4. License Renewal. This Order does not automatically extend the license and Respondent must comply with the requirements for license renewal.
  5. Costs. Respondent shall bear all costs of complying with this Consent Order.
  6. Violation of this Order. If Respondent violates this Order the Board, after giving Respondent notice and an opportunity to be heard, may rescind or modify this Order and impose additional appropriate disciplinary actions. If a complaint of unprofessional conduct is made against Respondent during the term of this Order, this Order shall be automatically extended until the unprofessional conduct matter is concluded.
  7. Completion of Conditional License Period. Respondent shall submit a petition to the Docket Clerk to remove any and all conditions on Respondent's license. The State will assent to or oppose Respondent's petition. The Board will conduct a hearing if necessary. Respondent bears the burden and must present proof that Respondent has fully complied with the terms of this Order and these conditions are no longer necessary to protect the public.
- C. Notwithstanding any provision above, the Respondent must continue to meet all Nursing Board requirements for maintaining a license, license renewal and license reinstatement.
- D. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).

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- E. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

**AGREED TO:**

Dated: May 28, 2021

STATE OF VERMONT  
SECRETARY OF STATE  
By: E-SIGNED by Jennifer Colin  
on 2021-05-28 09:59:07 EDT  
Jennifer B. Colin  
Prosecuting Attorney

Dated: May 27, 2021

RESPONDENT  
By: E-SIGNED by Theresa Faleski  
on 2021-05-27 18:32:05 EDT  
Theresa M. Faleski

**APPROVED AND SO ORDERED:**

Dated: June 15, 2021

VERMONT BOARD OF NURSING  
By: E-SIGNED by Ellen Watson  
on 2021-06-15 12:26:59 EDT  
Chairperson

Date of Entry: 6/18/21

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